Chapter 758

1983 REPLACEMENT PART

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RIGHTS OF WAY

758.010 Authority to construct lines and facilities; requirements and conditions by public officials. (1) Except within cities, any person or corporation has a right and privilege to construct, maintain and operate its water, gas, electric or communication service lines, fixtures and other facilities along the public roads in this state, as defined in ORS 368.001 or across rivers or over any lands belonging to the state, free of charge, and over lands of private individuals, as provided in ORS 772.210. Such lines, fixtures and facilities shall not be constructed so as to obstruct any public road or navigable stream.

(2) A county governing body and the Department of Transportation have authority to designate the location upon roads under their respective jurisdiction, outside of cities, where lines, fixtures and facilities described in this section may be located, and may order the location of any such line, fixture or facility to be changed when such governing body or department deems it expedient. Any line, fixture or facility erected or remaining in a different location upon such road than that designated in any order of the governing body or department is a public nuisance and may be abated accordingly.

(3) The state officer, agency, board or commission having jurisdiction over any land belonging to the state with respect to which the right and privilege granted under subsection (1) of this section is exercised may impose reasonable requirements for the location, construction, operation and maintenance of the lines, fixtures and facilities on such land. The person or corporation exercising such right and privilege over any land belonging to the state shall pay the current market value for the existing forest products that are damaged or destroyed in exercising such right and privilege. Such right and privilege of any person or corporation is conditioned upon compliance with the requirements imposed by this subsection. [Amended by 1955 c.123 §1; 1971 c.655 §100; 1981 c.153 §76]

758.015 Certificate of public convenience and necessity. (1) When any person, as defined in ORS 758.400, providing electric utility service, as defined in ORS 758.400, proposes to construct an overhead transmission line which will necessitate a condemnation of land or an interest therein, it shall petition the Public Utility Commissioner for a certificate of public convenience and necessity setting forth a detailed description and the purpose of the proposed transmission line, the estimated cost, the route to be followed, the availability of alternate routes, a description of other transmission lines connecting the same areas, and such other information in such form as the commissioner may reasonably require in determining the public convenience and necessity.

(2) The commissioner shall give notice and hold a public hearing on such petition. The commissioner, in addition to considering facts presented at such hearing, shall make his own investigation to determine the necessity, safety, practicability and justification in the public interest for the proposed transmission line and shall enter his order accordingly. The order shall be subject to review as in other cases. In any proceeding for condemnation, a certified copy of such order shall be conclusive evidence that the transmission line for which the land is required is a public use and necessary for public convenience.

(3) This section shall not apply to construction of transmission lines in connection with a project for which a permit or license is otherwise obtained pursuant to state or federal law. [1961 c.691 §19]

758.020 Joint occupancy of poles required. (1) The county court, board of county commissioners or the Department of Transportation, when designating the location where poles or other aboveground facilities described in ORS 758.010 may be placed on a road or highway which fronts on the ocean or on a river or other body of water and the water frontage of the highway is being developed or maintained for its scenic or recreational value, may require all lines to occupy the opposite side of the right of way, if such joint occupancy can be maintained without undue impairment of service or damage to public life and property.

(2) If the owners of such lines are unable to agree on the terms and conditions of joint occupancy, such department, court or board shall request the Public Utility Commissioner to determine the practicability of such joint occupancy and the effect thereof upon adequate and safe service by the prospective joint occupants, the location of the lines, and, if found to be practicable, to fix and prescribe the terms and conditions pursuant to which joint occupancy shall be accomplished. Before making or entering an order, such commissioner shall hold a hearing and make findings in accordance with ORS 756.500 to 756.610, subject to review as provided in ORS 756.580 to 756.610. In fixing terms and conditions pursuant to which joint occupancy shall be accomplished, the Public Utility Commissioner shall require the installation by each occupant of standards, devices and

equipment reasonably necessary to protect the equipment of the other occupants from damage and the public from injury arising from such joint occupancy.

(3) The right of any public utility to construct, maintain and operate on a public highway poles or fixtures is contingent on compliance with reasonable requirements established by the Department of Transportation, county courts, boards of county commissioners or the Public Utility Commissioner under authority of this section and ORS 758.010. Such rights are likewise contingent and conditioned on all facilities, equipment and installations being constructed and maintained in strict conformance with modern and approved standards. [Amended by 1971 c.655 §102]

758.030 [Renumbered 271.440]

758.035 Commissioner's power to enforce joint use of facilities. (1) Every public utility, person, association or corporation having conduits, subways, street railway tracks, poles or other equipment on, over or under any street or highway shall for a reasonable compensation permit the use of the same by any public utility whenever public convenience or necessity requires such use and such use will not result in irreparable injury to the owner or other users of such equipment nor in any substantial detriment to the service to be rendered by such owners or other users.

(2) In case of failure to agree upon such use or the conditions or compensation for such use, any public utility, person, association or corporation interested may apply to the commissioner, and if after investigation the commissioner ascertains that public convenience or necessity requires such use and that it would not result in irreparable injury to the owner or other users of such equipment, he shall by order direct that such use be permitted and prescribe reasonable conditions and compensation for such joint use.

(3) The use so ordered shall be permitted and the prescribed conditions and compensation shall be the lawful conditions and compensation to be observed, followed and paid, subject to recourse to the courts upon the complaint of any interested party as provided in ORS 756.580 to 756.610, and such statutes so far as applicable shall apply to any suit arising on a complaint so made. Any such order of the commissioner may be from time to time revised by the commissioner upon application of any interested party or upon his own motion. All public utilities shall afford all reasonable facilities and make all necessary regulations for the interchange of business, or traffic carried or their product between them, when ordered by the commissioner so to do. [Formerly 757.040]

758.040 [Renumbered 757.606]

758.050 [Renumbered 757.611]

758.060 [Amended by 1971 c.743 §426; renumbered 757.616]

758.070 [Renumbered 757.621]

758.080 [Renumbered 757.626]

758.090 [Renumbered 757.631]

758.100 [Renumbered 757.636]

758.110 [Renumbered 757.641]

UNDERGROUND ELECTRIC AND COMMUNICATIONS FACILITIES

758.210 Policy. The legislature finds that in many areas of this state landowners, utilities and public authorities desire to convert existing overhead electric and communication facilities to underground facilities by means of special assessment proceedings. The legislature declares that a public purpose will be served and that the public welfare will be promoted by providing a procedure to accomplish such conversion by special assessment proceedings and that it is in the public interest for such conversion to be accomplished as provided in ORS 758.210 to 758.270. [1969 c.385 §1]

758.215 Definitions for ORS 758.210 to 758.270. As used in ORS 758.210 to 758.270, unless the context requires otherwise:

(1) "Convert," "converting" or "conversion" means the removal of overhead electric or communication facilities and the replacement thereof with underground electric or communication facilities at the same or different locations.

(2) "Electric or communication facilities" means any works or improvements used or useful in providing electric or communication service, including but not limited to poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cutouts, switches, capacitors, meters, communication circuits, appliances, attachments and appurtenances, and all related facilities required for the acceptance of electric or communication services; however:

(a) "Electric facilities" does not include any facilities used or intended to be used for the transmission of electric energy at nominal voltages in excess of 35,000 volts.

(b) "Communication facilities" does not include facilities used or intended to be used for the transmission of intelligence by microwave or radio, apparatus cabinets or outdoor public telephones.

(c) "Electric or communication facilities" does not include any electric or communication facilities owned or used by or provided for a railroad or pipeline and located upon or above the right of way of the railroad or pipeline.

(3) "Landowner" or "owner" means the owner of the title to real property or the contract purchaser of real property of record as shown on the last available complete assessment roll in the office of the county assessor.

(4) "Overhead electric or communication facilities" means electric or communication facilities located above the surface of the ground.

(5) "Public authority" means a city or county.

(6) "Public lands and right of way" includes rights of way for streets, roads and highways and all land or interests in land owned by a public authority.

(7) "Underground assessment district" or "district" means an assessment district created as provided by ORS 758.210 to 758.270.

(8) "Underground electric or communication facilities" means electric or communication facilities located below the surface of the ground exclusive of those facilities such as substations, transformers, pull boxes, service terminals, pedestal terminals, splice closures, apparatus cabinets and similar facilities which normally are above the surface in areas where utility facilities are underground in accordance with standard underground practices.

(9) "Utility" means any electric or communication utility described by ORS 757.005, any plant owned or operated by a municipality, any person furnishing community antenna television service to the public and any cooperative corporation or people's utility district engaged in furnishing electric or communication service to consumers. [1969 c.385 §2; 1971 c.360 §1]

758.220 Authority for conversion to underground facilities; formation of assessment district. (1) A public authority shall have the power to require the conversion of overhead electric or communication facilities to underground facilities; to provide and receive funds to pay for such conversion; and to assess the whole or any part of the cost thereof against the real property included in the underground assessment district specially benefited by such conversion.

(2) An underground assessment district shall include an area having a frontage of not less than 400 feet upon a public street, road or highway along which overhead electric or communication facilities are located.

(3) An underground assessment district:

(a) Created by a city, may include area along city streets, county roads and state highways or any part thereof located within the district.

(b) Created by a county, may include areas along county roads, state highways or any part thereof located within the district. [1969 c 385 §3]

758.225 Petition, ordinance or resolution for conversion; contents; filing. (1) A proceeding for conversion may be initiated:

(a) By a petition signed by not less than 60 percent of the landowners within the proposed assessment district who own not less than 60 percent of the land area within the district; or

(b) By an ordinance or resolution of a public authority declaring its intention to order a conversion.

(2) A petition shall:

(a) Describe the proposed boundaries of the assessment district;

(b) Generally describe the proposed conversion; and

(c) Request that a proceeding for such conversion be taken pursuant to ORS 758.210 to 758.270.

(3) The petition shall be filed with the city recorder, county clerk or other person designated by the public authority to receive the petition and to verify the signatures. If the petition is signed by the requisite number of qualified signers, the official so designated shall execute a certificate of sufficiency and present the petition and certificate to the governing body of the city or to the county court or board of county commissioners, as the case may be. [1969 c.385 §4]

758.230 Assessment procedure; objections to conversion. (1) Upon presentation of the petition and certificate of sufficiency, or upon adoption of an ordinance or resolution, the public authority shall proceed in the manner provided by ORS 223.389.

(2) Unless the charter of a county provides otherwise, a county shall declare a proposed conversion abandoned if, after notice as provided by ORS 223.389, objections to the conversion are received by a county court or board of county commissioners signed by more than 50 percent of the landowners within the proposed assessment district who own more than 50 percent of

land within the district. If a proposed conversion is abandoned because of objections, no new proceeding for the conversion shall be undertaken within a period of one year thereafter. [1969 c.385 §5]

758.235 Applicability of local improvement laws; issuance of bonds. Unless otherwise provided by ORS 758.210 to 758.270, the provisions relating to the procedure for local improvements in cities, as set forth in ORS 223.205, 223.210 to 223.295, 223.387 to 223.399, 223.401, 223.405 to 223.485, 223.505 to 223.595, 223.610, 223.615 to 223.650, 223.770 and 287.502 to 287.515, apply to proceedings for a conversion by a city or county under ORS 758.210 to 758.270. In a proceeding conducted by a county, where the statutes referred to in this section refer to officials of cities, the corresponding officials of the county shall perform the required functions, unless otherwise provided by order of the county court or board of county commissioners. Cities and counties may, as provided by ORS 223.205 and 223.210 to 223.295, issue improvement bonds in the total amount of the valid applications received to pay assessments in instalments. [1969 c.385 §6]

758.240 Contract with utility for conversion. (1) When a public authority in accordance with ORS 758.230 determines that a conversion shall be made, it may contract with the utilities supplying electric or communication service within the underground assessment district to perform the conversion. A contract shall provide:

(a) A description of the electric and communication facilities to be converted;

(b) That plans and specifications for such conversion shall be supplied or approved by the affected utility;

(c) The time and manner in which underground electric and communication facilities will be installed and overhead electric and communication facilities will be removed;

(d) The estimated cost of converting overhead facilities located on public lands and right of way to underground facilities;

(e) The estimated cost of converting related utility service facilities located on privately owned lots and parcels;

(f) The time and manner of making payments and the source of funds for such payments; and

(g) That upon completion of the work of conversion, the utility performing the conversion shall have legal title to the electric or communication facilities, which shall thereafter constitute a part of a system of the utility and be used, operated, maintained and managed by it as part of its system.

(2) Upon approval and execution of the conversion contracts by the utilities and public authority, the public authority shall direct the utilities owning overhead electric or communication facilities within the district to convert such facilities as required by the contract. [1969 c.385 §7]

758.245 Payment of costs for conversion; removal of overhead facilities. Upon completion of the conversion of the overhead electric or communication facilities on public lands and right of way to underground, the affected utility shall file a verified statement of the costs of such conversion with the public authority. The public authority shall adopt an ordinance assessing the whole or any part of the cost of the conversion against the real property in the underground assessment district specifically benefited and shall promptly thereafter mail to each landowner a statement of the amount of such costs assessed to his property. With the statement the public authority shall mail to each landowner a notice stating that:

(1) Service from the underground facilities is available;

(2) The landowner has 90 days after the date of the mailing of such notice to convert all overhead electric or communication facilities providing service to any structure or improvement located on his lot or parcel to underground service facilities; and

(3) After the 90-day period following the date of the mailing of the notice, the public authority will order the utilities to disconnect and remove all overhead electric and communication facilities providing service to any structure or improvement within the area. [1969 c.385 §8]

758.250 Conversion of facilities on private lands; procedure; payment of costs. (1) Any conversion of electric or communication service facilities, including service connections, located on a privately owned lot or parcel shall be made at the expense of the landowner by the utility owning the facility. The conversion shall be made in accordance with applicable safety rules, codes, regulations, tariffs or ordinances. The utility shall not be required to convert service lines on property, other than public lands and right of way, until the landowner furnishes to the utility a permit or easement authorizing the utility and its employes, agents

and contractors to enter upon real property of the landowner for the purpose of performing conversion work thereon.

(2) Upon completion of the conversion of overhead electric or communication service facilities on privately owned lots and parcels within a district, the utility shall file with the public authority a verified statement of the costs of the conversion of such service facilities of each landowner in the district. Promptly thereafter the public authority shall mail to each landowner a copy of such verified statement. [1969 c 385 §9]

758.255 Discontinuance of utility service for noncompliance with conversion provisions. If the owner of any structure or improvement served from the overhead electric or communication service facilities within an underground assessment district does not grant the utility a permit or easement referred to in ORS 758.250 or if such an owner fails to convert to underground service facilities within 90 days after the mailing to him of the notice provided by ORS 758.245, the public authority shall order the utility to complete the conversion and to disconnect and remove all overhead facilities, including service facilities, providing service to such structure or improvement. [1969 c.385 §10]

758.260 Competitive bidding for utility conversion inapplicable. To the extent that the contract between the utility and the public authority provides that all or any part of the conversion work shall be performed by the utility, any statute or charter provision requiring competitive bidding and the award of a contract to the lowest responsible bidder does not apply. [1969 c.385 §11]

758.265 Overhead facilities prohibited in assessment district after conversion. Once converted, no overhead electric or communication facilities shall be installed, maintained or operated in any underground assessment district except as authorized by ORS 758.210 to 758.270. [1969 c.385 §12]

758.270 ORS 758.210 to 758.270 supplemental to existing laws and rights. ORS 758.210 to 758.270 are supplemental and cumulative of existing rights, laws, charters, ordinances and franchises and shall not abrogate or modify any franchise granted to a utility by any local government or abrogate or modify in any way existing rights, laws, charters or ordinances of any local government. [1969 c.385 §13]

ALLOCATION OF TERRITORIES AND CUSTOMERS

758.400 Definitions for ORS 758.400 to 758.475. As used in ORS 758.015 and 758.400 to 758.475 unless the context requires otherwise:

(1) "Allocated territory" means an area with boundaries established by a contract between persons furnishing a similar utility service and approved by the commissioner or established by an order of the commissioner approving an application for the allocation of territory.

(2) "Person" includes individuals, firms, partnerships, corporations, associations, cooperatives and municipalities, or their agent, lessee, trustee or referee.

(3) "Utility service" means service provided by any equipment, plant or facility for the distribution of electricity to users, the distribution of natural or manufactured gas to consumers through a connected and interrelated distribution system or the conveyance of telephone messages to subscribers, with or without wires. "Utility service" does not include service provided through or by the use of any equipment, plant or facilities:

(a) For the production or transmission of electricity or gas or the conveyance of telephone messages, which pass through or over but are not used to provide service in or do not terminate in an area allocated to another person providing a similar utility service; nor

(b) For the conveyance of telephone messages, commonly known as "private lines" or "farmer lines." [Formerly 757.605; 1979 c.62 §2]

758.405 Purpose of ORS 758.400 to 758.475. The elimination and future prevention of duplication of utility facilities is a matter of state-wide concern; and in order to promote the efficient and economic use and development and the safety of operation of utility services while providing adequate and reasonable service to all territories and customers affected thereby, it is necessary to regulate in the manner provided in ORS 758.400 to 758.475 all persons and entities providing utility services. [Formerly 757.610]

758.410 Contracts for allocation of territories and customers between suppliers of utility service and for transfer of facilities. (1) Any person providing a utility service may contract with any other person providing a similar utility service for the purpose of allocating territories and customers between

the parties and designating which territories and customers are to be served by which of said contracting parties; and the territories and customers so allocated and designated may include all or any portion of the territories and customers which are being served by either or both of the parties at the time the contract is entered into, or which could be economically served by the then existing facilities of either party, or by reasonable and economic extensions thereto.

(2) Any such contracting parties may also contract in writing for the sale, exchange, transfer, or lease of equipment or facilities located within territory which is the subject of the allocation agreed upon pursuant to subsection (1) of this section. Any sale, exchange, transfer or lease of equipment, plant or facilities made pursuant to this subsection by any person which is a "public utility" as defined in ORS 757.005 is also subject to the approval of the commissioner to the extent required by ORS chapter 757. [Formerly 757.615]

758.415 Contract enforceable if approved by commissioner; conditions for approval. Notwithstanding any other provisions of law, a contract entered into pursuant to ORS 758.410, when approved by the commissioner as provided in ORS 758.420 to 758.475, shall be valid and enforceable; provided, that the commissioner shall approve such a contract only if he finds, after a hearing as provided in ORS 758.420 to 758.475, that the contract will eliminate or avoid unnecessary duplicating facilities, and will promote the efficient and economic use and development and the safety of operation of the utility systems of the parties to the contract, while providing adequate and reasonable service to all territories and customers affected thereby. [Formerly 757.620]

758.420 Hearing on contract approval; notice. (1) A contract entered into pursuant to ORS 758.410 shall be promptly filed with the commissioner, and the commissioner shall, within 60 days after such filing, give notice and set the date and place of hearing on the question as to whether or not such contract will be approved. The hearing shall be held at a place within or conveniently accessible to the territories affected by the contract.

(2) The commissioner shall publish notice of the hearing in a newspaper or newspapers of general circulation in each of the territories affected by the contract. Each such notice shall be published at least once weekly for two successive weeks. [Formerly 757 625]

758.425 Order of commissioner on contract; suit to vacate order. (1) On the basis of the record made at the hearing held pursuant to ORS 758.420, the commissioner shall enter an order either approving or disapproving the contract as filed, together with findings of the facts supporting such order.

(2) Any party to such contract may commence a suit to vacate and set aside the commissioner's order on the ground that such order is unlawful, and so far as applicable and not inconsistent herewith, the provisions of ORS 756.580 to 756.610 shall govern such suit.

(3) If the commissioner approves a contract and no suit is filed to vacate or set aside the commissioner's order as above provided, the contract shall be deemed to be valid and enforceable for all purposes from the date on which the right to file such suit expires. If a suit to vacate or set aside the commissioner's order is filed, the validity of the contract shall be as determined by the final judgment therein rendered. [Formerly 757.630]

758.430 Amendment of contract; approval of commissioner. Any contract that has been approved as provided in ORS 758.400 to 758.475 may be subsequently amended by the parties thereto, but any such amendatory agreement shall be filed with the commissioner and shall thereafter be approved or disapproved by the commissioner in the manner provided in ORS 758.420 and 758.425. However, no hearing is required if all affected customers approve the amendatory agreement. An amendatory agreement may be enforced in the manner provided in ORS 758.465. [Formerly 757.635; 1983 c.540 §5]

758.435 Application, by person providing exclusive utility service, for allocation of territory; hearing; notice. (1) Any person providing a utility service in a territory that is not served by another person providing a similar utility service may make application to the commissioner for an order allocating such territory to it. The application may include any adjacent area that it is more economical and feasible to serve by an extension of the applicant's existing facilities than by an extension of the facilities of another person.

(2) The commissioner shall within 60 days after the filing of such application give notice and set the date and place of hearing. The hearing shall be held at a place within or conveniently accessible to the territory covered by the application. Notice shall be by publication in a newspaper or newspapers of general circulation in the territory covered by the application and

shall be published at least once weekly for two successive weeks.

(3) Territory within the limits of a city, as fixed on May 31, 1961, shall not be deemed to be served exclusively by any person, if such city is, on such date, served by more than one person having necessary municipal or franchise authority to serve within the entire city. [Formerly 757.640]

758.440 Order of commissioner on application. (1) On the basis of the record made at the hearing held pursuant to ORS 758.435, the commissioner shall enter an order either approving or disapproving the application as filed, or as amended, together with findings of the facts supporting such order.

(2) The commissioner, before approving an application for the allocation of territory, shall find that the applicant is exclusively serving the territory covered by the application and in the case of an adjacent unserved area that it is more economical and feasible to serve by an extension of the applicant's existing facilities than by an extension of the facilities of another person. [Formerly 757.645]

758.445 Suit to vacate order on application. Any party to the hearing may commence a suit to vacate and set aside the commissioner's order as provided in ORS 756.580 to 756.610. If no suit is filed to vacate or set aside the commissioner's order within the specified time, the order shall thereafter be valid and enforceable for the purposes herein specified from the date on which the right to file such suit expires. If a suit to vacate or set aside the commissioner's order is filed, the validity of the order shall be determined by the final judgment therein provided. [Formerly 757 650]

758.450 Contract required for allocation of territory; exception; allocated territory exclusive; activity prohibited during pendency of application. (1) Territory served by more than one person providing similar utility service may only become an allocated territory by a contract approved by the commissioner.

(2) Except as provided in subsection (4) of this section, no other person shall offer, construct or extend utility service in or into an allocated territory.

(3) Except as provided in subsection (4) of this section, during the pendency of an application for an allocation of exclusively served territory, no person other than applicant shall offer, construct or extend utility service in or into the territory applied for; nor shall any person, without the express consent of the commissioner, offer, construct or extend utility service in or into any unserved territory which is the subject of a filing pending before the commissioner under ORS 758.420 or 758.435.

(4) The provisions of ORS 758.400 to 758.475 do not apply to any corporation, company, individual or association of individuals providing heat, light or power to less than 20 customers. [Formerly 757.652; 1981 c.360 §2]

758.455 Investigation by commissioner respecting contracts or applications; hearing procedure. (1) The commissioner may make such investigations respecting a contract or an application for the allocation of territory as he deems proper including the physical examinations and evaluations of the facilities and systems of the parties to the contract, estimates of their operating costs and revenues and studies of such other information as he deems pertinent.

(2) In so far as applicable and consistent herewith, the provisions of ORS 756.500 to 756.610 shall govern the conduct of hearings.

(3) In considering competing applications to serve the same territory, there shall be a disputable presumption that applicants have an equal ability to extend, improve, enlarge, build, operate and maintain existing or proposed facilities. [Formerly 757.655]

758.460 Assignment or transfer of rights acquired by allocation; approval of commissioner. (1) The rights acquired by an allocation of territory may only be assigned or transferred with the approval of the commissioner after a finding that such assignment or transfer is not contrary to the public interest. However, no hearing is required if all affected customers agree to the proposed assignment or transfer.

(2) No approved contract or order approving an allocation of territory shall be construed to confer any property right; providing, however, upon the death of an individual who is a party to an approved contract or the applicant under an approved order, the executor or administrator shall continue the operation thereunder for the purpose of transferring such rights for a period of not to exceed two years from the date of death.

(3) In the event the property of a person serving an allocated territory is condemned, no value shall be claimed or awarded by reason of the contract or order making such allocation. [Formerly 757.670; 1983 c.540 §6]

758.465 Enforcement procedure. In the event a contract approved by the commissioner is breached or in the event an allocated territory is served by a person not authorized by such contract, or order of the commissioner, the aggrieved person or the commissioner may file an action in the circuit court for any county in which is located some or all of the allocated territory allegedly involved in said breach or invasion, for an injunction against said alleged breach or invasion. The trial of such action shall proceed as in an action not triable by right to a jury. Any party may appeal to the Court of Appeals from the court's decree, as in other equity cases. The remedy provided in this section shall be in addition to any other remedy provided by law. [Formerly 757.675; 1979 c.284 §198]

758.470 Application to cities, municipalities and cooperatives of ORS 758.400 to 758.475. (1) ORS 758.015 and 758.400 to 758.475 shall not be construed or applied to restrict the powers granted to cities to issue franchises, or to restrict the exercise of the power of condemnation by a municipality; and when a municipality has condemned or otherwise acquired another person's equipment, plant or facilities for rendering utility service, it shall acquire all of the rights of the person whose property is condemned to serve the territory served by the acquired properties.

(2) ORS 758.015 and 758.400 to 758.475 shall not be construed to restrict the right of a municipality to provide utility service for street lights, fire alarm systems, airports, buildings and other municipal installations regardless of their location.

(3) ORS 758.015 and 758.400 to 758.475 shall not be construed to confer upon the commissioner any regulatory authority over rates, service or financing of cooperatives or municipalities. [Formerly 757 680]

758.475 Fees. Except in cases under ORS 758.430 and 758.460 where no hearing is required, to cover the costs of administering ORS 758.015 and 758.400 to 758.475 the commissioner is required to receive fees before filing any contract, application, petition, complaint, protest, appearance, motion, answer or other pleading and for holding any hearing. All fees shall be collected in accordance with the following schedule:

(1) Filing application for allocated territory under ORS 758.435 by a person having annual gross revenue derived from within the state for the calendar year 1960:

(a) In excess of $5 million or more, a fee of two-tenths of one mill of such revenue but in no event shall such fee exceed, $10,000.

(b) In excess of $100,000 but less than $5 million, $100.

(c) Less than $100,000, $50.

(2) Filing a contract or application under ORS 758.015 or 758.420, $100.

(3) Filing petition or complaint, $25.

(4) Filing protest, appearance, motion, answer or other pleading, $10.

(5) Filing an application for allocated territory under ORS 758.435 subsequent to an original allocation and payment of fee under subsection (1) of this section, $100. [Formerly 757.685; 1983 c.540 §7]

COGENERATION AND SMALL POWER PRODUCTION FACILITIES

758.500 [1979 c.730 §2, 1981 c.714 §1; repealed by 1981 c.714 §5 and by 1983 c.799 §9]

758.505 Definitions for 758.505 to 758.555. As used in ORS 758.505 to 758.555:

(1) "Avoided cost" means the incremental cost to an electric utility of electric energy or energy and capacity that the utility would generate itself or purchase from another source but for the purchase from a qualifying facility.

(2) "Cogeneration facility" means a facility that:

(a) Produces, through the sequential use of energy, electric energy and useful thermal energy including but not limited to heat or steam, used for industrial, commercial, heating or cooling purposes; and

(b) Is more than 50 percent owned by a person who is not an electric utility, an electric holding company, an affiliated interest or any combination thereof.

(3) "Commissioner" means the Public Utility Commissioner.

(4) "Electric utility" means a nonregulated utility or a public utility.

(5) "Index rate" means the lowest avoided cost approved by the commissioner for a generating utility for the purchase of energy or energy and capacity of similar characteristics including on-line date, duration of obligation and quality and degree of reliability.

(6) "Nonregulated utility" means an entity providing retail electric utility service to Oregon consumers that is a people's utility district or-

ganized under ORS chapter 261, a municipal utility operating under ORS chapter 225 or an electric cooperative organized under ORS chapter 62.

(7) "Public utility" means a utility regulated by the commissioner under ORS chapter 757, that provides electric power to consumers.

(8) "Qualifying facility" means a cogeneration facility or a small power production facility.

(9) "Small power production facility" means a facility that:

(a) Produces energy primarily by the use of biomass, waste, solar energy, wind power, water power, geothermal energy or any combination thereof;

(b) Is more than 50 percent owned by a person who is not an electric utility, an electric utility holding company, an affiliated interest or any combination thereof; and

(c) Has a power production capacity that, together with any other small power production facility located at the same site and owned by the same person, is not greater than 80 megawatts. [1983 c.799 §1]

758.510 [1979 c.730 §3; 1981 c.714 §2; repealed by 1981 c.714 §7 and by 1983 c.799 §9]

758.515 Legislative findings. The Legislative Assembly finds and declares that:

(1) The State of Oregon has abundant renewable resources.

(2) It is the goal of Oregon to:

(a) Promote the development of a diverse array of permanently sustainable energy resources using the public and private sectors to the highest degree possible; and

(b) Insure that rates for purchases by an electric utility from, and rates for sales to, a qualifying facility shall over the term of a contract be just and reasonable to the electric consumers of the electric utility, the qualifying facility and in the public interest.

(3) It is, therefore, the policy of the State of Oregon to:

(a) Increase the marketability of electric energy produced by qualifying facilities located throughout the state for the benefit of Oregon's citizens; and

(b) Create a settled and uniform institutional climate for the qualifying facilities in Oregon. [1983 c.799 §2]

758.520 [1979 c.730 §4; 1981 c.714 §3]

758.525 Electric utilities to file avoided cost schedules; requirement to purchase energy from qualifying facilities. (1) At least once every two years each electric utility shall prepare, publish and file with the commissioner a schedule of avoided costs equaling the utility's forecasted incremental cost of electric resources over at least the next 20 years. Prices contained in the schedules filed by public utilities shall be reviewed and approved by the commissioner.

(2) An electric utility shall offer to purchase energy or energy and capacity whether delivered directly or indirectly from a qualifying facility. Except as provided in subsection (3) of this section, the price for such a purchase shall not be less than the utility's avoided costs. At the option of the qualifying facility, exercised before beginning delivery of the energy or energy and capacity, such prices may be based on:

(a) The avoided costs calculated at the time of delivery; or

(b) The projected avoided costs calculated at the time the legal obligation to purchase the energy or energy and capacity is incurred.

(3) Nothing contained in ORS 543.610, 757.005 and 758.505 to 758.555 shall be construed to require an electric utility to pay full avoided-cost prices for a purchase from a qualifying facility on which construction began before November 8, 1978, but the price for a purchase from such a facility shall be sufficient to encourage production of energy or energy and capacity.

(4) The rates of an electric utility for the sale of electricity shall not discriminate against qualifying facilities. [1983 c.799 §3]

758.530 [1979 c.730 §5; 1981 c.714 §4; repealed by 1981 c.714 §11 and by 1983 c.799 §9]

758.535 Criteria for qualifying facility; terms and conditions of energy sale. (1) The commissioner shall establish minimum criteria that a cogeneration facility or small power production facility must meet to qualify as a qualifying facility under ORS 543.610, 757.005 and 758.505 to 758.555.

(2) The terms and conditions for the purchase of energy or energy and capacity from a qualifying facility shall:

(a) Be established by rule by the commissioner if the purchase is by a public utility;

(b) Be adopted by an electric cooperative or people's utility district according to the applicable provision of ORS chapter 62 or 261; and

(c) Be established by a municipal utility according to the requirements of the municipality's charter and ordinance.

(3) The rules or policies adopted under subsection (2) of this section also shall:

(a) Establish safety and operating requirements necessary to adequately protect all systems, facilities and equipment of the electric utility and qualifying facility;

(b) Be consistent with applicable standards required by the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617); and

(c) Be made available to the public at the commissioner's office. [1983 c.799 §4]

758.540 [1979 c.730 §6, repealed by 1981 c.714 §13]

758.545 Electric utility required to make good faith effort to transmit energy from qualifying facility. (1) If an electric utility fails to make a good faith effort to comply with a request from a qualifying facility to transmit energy or energy and capacity produced by the qualifying facility to another electric utility or to the Bonneville Power Administration, the electric utility shall purchase the qualifying facility's energy or energy and capacity at a price which is the higher of:

(a) The electric utility's avoided cost; or

(b) The index rate.

(2) As used in this section, "good faith effort" shall be demonstrated by the electric utility's publication of a generally applicable, reasonable policy of the electric utility to allow a qualifying facility to use the electric utility's transmission facilities on a cost-related basis. [1983 c.799 §5]

758.550 [1979 c.730 §7; repealed by 1983 c.799 §9]

758.555 Qualifying facility does not become public utility by selling energy. A qualifying facility shall not become a public utility within the meaning of ORS 757.005 on account of sales made under ORS 543.610, 757.005 and 758.505 to 758.555. [1983 c.799 §6]

758.990 [Renumbered 757.992]

CHAPTER 759
[Reserved for expansion]